

Legal Avenues: Your Road to Solutions

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An Elder Client Primer for the Non-Specialist

With 12,000 Ohioans turning 60 every month, all Ohio attorneys will likely face the prospect of providing legal assistance to older or “elderly” clients in the course of their careers.¹ Although elder law attorneys are usually best suited to meet the typical needs of these individuals (retirement, long-term care, and estate planning, etc), older clients may have a wide variety of legal needs that lead them to seek counsel from attorneys specialized in other areas of the law. For this reason, it’s important for all attorneys to become familiar with the potential issues associated with working with older clients.²

First Impressions

While some older individuals may validate certain age-related stereotypes, like frailty, forgetfulness, stubbornness, or ill health, attorneys should be careful not to project these qualities onto every client of advanced years. As with any age group, older individuals come from a variety of social and economic backgrounds, and what may be true of some isn’t always true of others.³

For instance, falsely assuming that all older individuals suffer a natural decline in competence as they age (a psychological concept called *decrement*) can adversely affect attorney-client relationships by clouding each party’s perception of themselves and each other.⁴

As much as possible, it’s generally best to treat older clients just like any other client. Especially during the first few meetings, it’s important to listen carefully and evaluate their best interests on an individual level rather than quickly resorting to stereotypical assumptions.⁵

Conflicts of Interest

Sometimes older clients may arrive for their first

consultation accompanied by a spouse or adult child. In these situations, attorneys must be quick to establish whose interests they’re representing so appropriate measures to ensure confidentiality and unbiased counsel are taken. It’s a good idea to document this in writing—especially if the client wants to share confidential transcripts or correspondence with another party.⁶

If diminished capacity is a legitimate concern, attorneys may feel compelled to protect their clients’ interests but should take care to avoid unnecessary breeches in confidentiality.⁷ ABA Model Rule 1.14 suggests attorneys should exhaust all less restrictive options, such as consulting with family members and reevaluating the client’s capacity at a later date, before initiating guardianship or conservatorship proceedings.⁸ However, it may be possible to maintain a relatively normal attorney-client relationship with an individual of limited capacity by simply speaking more slowly and distinctly, repeating and explaining information in different ways, and varying the time and location of meetings until a time and place are identified that helps the client achieve optimal competence.⁹

Networking to Benefit Clients

A client-centered approach to working with older individuals may reveal that a client’s interests would be best served in conjunction with additional service providers, like counselors, healthcare professionals, and financial planners. Networking to identify trusted service providers for such client referrals not only gives attorneys additional tools to assist their older clients but also provides opportunities to make contact with experienced professionals and attorneys that can provide insight and guidance concerning meeting the legal needs of older individuals.¹⁰

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Footnotes

¹Kreiner, Margaret H. and Deanna L. Durbin. *Ohio Elder Law*. Egan, MN: Thomson Reuters, 2013. 4.

²Green, Bruce A. and Nancy Coleman. “Foreword Special Issue: Ethical Issues in Representing Older Clients” *Fordham Law Review*. 62 (1994): 963-964. Accessed 11 August 2014. Available at: <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3073&context=flr>

³Westwood, Sue. “‘I May Be Older, But I Ain’t No Elder’: A Critique of ‘Elder’ Law” *Temple Political and Civil Rights Law Review*. 21 (2012): 492-496.

⁴Rubinson, Robert. “Constructions of Client Competence and Theories of Practice” *Arizona State Law Journal*. 31 (1999): 131-138.

⁵Burke, Walter T. and Timothy E. Casserly. “Ethical and Psychological Aspects of Representing the Elderly” *American Law Institute - American Bar Association Continuing Legal Education*. (2006): 737-738.

⁶Burke 730.

⁷Flemming, Robert B. and Lisa Nachmias Davis. *Elder Law Answer Book, Third Edition*. New York: Wolters Kluwer, 2014. 2-5.

⁸Flemming 2-7.

⁹Flemming 2-24 and 2-24.1.

¹⁰Green 964, 968.